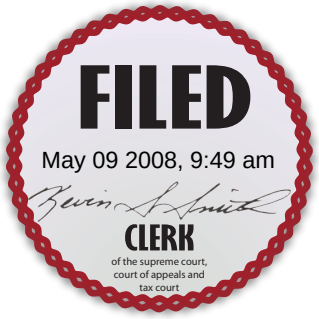

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IN THE
COURT OF APPEALS OF INDIANA

TYRONE RAYFORD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0709-CR-500
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0705-CM-91638

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Tyrone Rayford was convicted of battery[1] as a Class A misdemeanor after a bench trial. He appeals raising the following restated issue: whether sufficient evidence was presented to support his battery conviction and negate his claim of self-defense.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the afternoon of March 22, 2007, Rayford was living with his father, Elijah Milton, in Indianapolis. The two got into an argument because Rayford was not obeying the rules of the house. Milton asked Rayford to leave the house. Rayford cursed at Milton and spit on him. Rayford then charged at Milton, drew a gun, and hit him in the head with it. These blows to Milton's head caused him to suffer lacerations, pain and bleeding. At some point, Rayford called the police and exited the house.

The State charged Rayford with battery as a Class A misdemeanor. He was found guilty as charged after a bench trial held on August 3, 2007. Rayford now appeals.

DISCUSSION AND DECISION

Rayford argues that the evidence presented at trial was not sufficient to support his conviction because the State failed to rebut his claim that he acted in self-defense. The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000); *Green v. State*, 870 N.E.2d 560, 565 (Ind. Ct. App. 2007), *trans. denied*. We neither reweigh the evidence nor judge the credibility of the witnesses. *Brown*, 738 N.E.2d at 273. We will consider only the evidence most favorable to the

[1] *See* IC 35-42-2-1.

judgment together with the reasonable inferences to be drawn therefrom. *Id*. We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

Self-defense is a valid justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000); *Green*, 870 N.E.2d at 564. A person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force. IC 35-41-3-2(a). A person is not justified in using force if he enters into combat with another person or is the initial aggressor, unless the person communicates an intent to withdraw and the other person nevertheless continues or threatens to continue unlawful action. IC 35-41-3-2(e)(3). Self-defense is established if a defendant: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. *Green*, 870 N.E.2d at 564. The State has the burden of disproving self-defense, and therefore, once a defendant claims self-defense, the State must disprove at least one of the elements beyond a reasonable doubt. *Id*. "The State may meet this burden by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief." *Id*.

In order to convict Rayford of battery as a Class A misdemeanor, the State was required to prove that he knowingly or intentionally touched Milton in a rude, insolent, or angry manner, and that the touching resulted in bodily injury to him. IC 35-42-2-1(a)(1)(A). "Bodily injury" is defined as "any impairment of physical condition, including physical pain." IC 35-41-1-4. Rayford does not dispute that he struck Milton, and as a result, Milton

suffered a laceration. He only contends that the State failed to disprove his claim of self-defense. Rayford asserts that his use of force against Milton was reasonable because Rayford reasonably believed that he was in danger and his actions were only to defend himself from his aggressor, Milton.

The evidence most favorable to the judgment showed that although Rayford was initially in a place where he had a right to be, Rayford no longer had a right to be there once Milton told him to leave the home. Rayford's name was not on the lease, and he had no right to remain without Milton's permission. Therefore, Rayford had no right to be in the home after Milton had told him to leave.

Further, Milton testified that Rayford was the initial aggressor and introduced the gun into the fight. Although Milton did defend himself, the trial court concluded that Rayford was the initial aggressor and that Milton's actions were appropriate in response to the attack by Rayford. The amount of force used to defend oneself must be proportionate to the requirements of the situation. *McKinney v. State*, 873 N.E.2d 630, 643 (Ind. Ct. App. 2007), *trans. denied*. "When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished." *Pinkston v. State*, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004), *trans. denied*. In the present case, however, the trial court determined that Milton did not participate willingly in the violence, but merely protected himself from the attack by his son, Rayford.

The evidence presented at trial supported the conclusion that Rayford initiated the attack on Milton, and that Milton appropriately defended himself. After being told to leave Milton's home, Rayford spit at his father, charged at him, and began hitting him in the head.

During this attack, Rayford drew a gun on Milton and used this gun to hit Milton in the head causing a laceration. We conclude that sufficient evidence was presented to support Rayford's conviction for battery and to rebut his claim of self-defense. Rayford's arguments to the contrary are merely an invitation to reweigh the evidence, which we cannot do on review. *Brown*, 738 N.E.2d at 273.

Affirmed.

RILEY, J., and MAY, J., concur.